

REMARKS

The following comments are responsive to the Non-Final Office Action of March 3, 2009 (“Action”). Reconsideration and allowance are respectfully requested based on the below remarks.

Rejection under 35 U.S.C. § 112

On page 2, the Action rejects claim 41 under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. The Action indicates that the application “fails to disclose what is considered computer readable medium in the specification, thereby rendering it new matter.” Claim 41 was cancelled in the previous response, and it appears that the Office is referring to claim 40 instead. Applicants respectfully traverse the rejection.

The claims in the parent application as originally filed recited a computer readable medium, and hence it is not new matter. *See* claims 16-17 of WO/2004/030399, where claim 16 recites a “computer program comprising program instructions for causing a network element to perform the method of any one of claims 9 to 15” and claim 17 recites a “computer program according to claim 16, embodied on computer readable medium.” As explained in M.P.E.P. 2163.06, “information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter.” Further, page 9, line 31 to page 10, line 1 of the description as published during the International Phase (paragraph [0036], lines 6 to 11 of the US patent publication) provide an example of a computer readable medium, stating that a “memory facility 18 is provided for storing the router application software” and depicting such a memory facility 18 in Figure 4. As such, the application provides support for a computer readable medium, and hence recitation of a “computer readable medium” in claim 40 is not new matter. Accordingly, Applicants respectfully request that the rejection of claim 40 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Rejection under 35 U.S.C. § 101

On pages 2-3, the Action rejects claim 40 under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter. Applicants respectfully traverse. Claim 40 has been amended to recite a “computer-readable medium storing computer-executable instructions that, when executed, cause a network element to perform the method of claim 33.” Applicants submit this amendment has rendered the rejection moot and respectfully request withdrawal of the rejection under 35 U.S.C. § 101.

Rejection under 35 U.S.C. § 103

Claims 25-29 and 31-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanterakis (US Patent No. 7,099,346 B1) in view of Lin et al. (US Patent No. 6,088,721). Claim 30 stands rejected as being unpatentable over Kanterakis in view of Lin, in further view of Alexander (US Patent No. 7,411,901). Claims 33-37 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin in view of Kanterakis. Claim 38 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin in view of Kanterakis, in further view of Alexander. Claim 40 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin in view of Kanterakis, in further view of Iliadis (US Publication No. 2001/0015958). Applicants respectfully traverse for at least the following reasons.

A. Comments on Claims 25-29 and 31-32

The combination of Kanterakis and Lin, even if proper, fails to teach or suggest “wherein the processor is configured to limit the group to further hosts situated at the same location” as recited in claim 25. On page 5, the Action concedes that “Kanterakis does not expressly disclose a processor for defining a group comprising one or more further hosts, wherein a further host is added to the group in response to the reception of a request.” Further in the rejection, the Action alleges that Kanterakis disclose such a processor limiting the group to further hosts situated at the same location based on column 6, lines 13 to 21. *See* Action, p. 5. The cited passage merely discloses that “physical channel resources” are assigned by a radio network controller (RNC) 11 to mobile stations 15 “by re-configuring the state of packet data connected mode of each mobile station 15 with each cell of each base station.” Notably, the cited passage

does not disclose or suggest limiting a group based on location or on any other criteria. For instance, Kanterakis does not disclose different handling of mobile stations at different locations or in different cells or the sending of data to mobile stations in a particular cell and not another. Consequently, in addition to failing to disclose a processor for defining a group comprising one or more further hosts, wherein a further host is added to the group in response to the reception of a request, Kanterakis also fails to disclose such a processor being configured to limit the group to further hosts situated at the same location.

Further, the Action asserts that Lin implicitly discloses formation of a group by the transmission of data from a server to one or more caching servers requesting a specified set of data. Applicants respectfully disagree. Lin discloses three embodiments. In the first, "the server determines to which caching servers to transmit the file 370" (*see e.g.*, column 6, lines 43-45). In the second, "all files get transmitted to all caching servers" (*see e.g.*, column 6, lines 45-47). In the third, "it may be predetermined that certain caching servers would receive certain files" (*see e.g.*, column 6, lines 47-50). However, Lin fails to disclose transmission of one or more files to caching servers situated at the same location.

Accordingly, both Kanterakis and Lin fail to disclose "wherein the processor is configured to limit the group to further hosts situated at the same location" as recited in claim 25. Consequently, it would not be obvious to modify the system of Kanterakis to include such a feature, based on Lin. Therefore, the apparatus of claim 25 is not obvious in view of Kanterakis and Lin. The apparatuses of claims 26-29 and 31-32 are also non-obvious, by way of dependency on claim 25, in addition to the features they recite. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103 and submit that claims 25-29 and 31-32 are in condition for allowance.

B. Comments on Claims 30 and 38

The combination of Kanterakis, Lin, and Alexander, even if proper, fails to teach or suggest "wherein the time limit changes dynamically" as recited in claim 30. On page 7, the Action concedes that Kanterakis and Lin fail to disclose this claim feature, and relies on Alexander to cure the deficiency.

Alexander disclose the adjustment of timer durations in order to control transmission frequency or data packet size, in order to ensure that data delivery can be achieved at a particular bit rate.

Notably, Alexander does not disclose the adjustment of a time limit to allow for the receipt of requests to join a group. Moreover, Alexander fails to cure the deficiency of Kanterakis and Lin, in that it does not disclose the limitation of a group to further hosts situated at the same location. As such, the cited combination does not teach or suggest all of the features recited in claim 30 and hence do not establish a *prima facie* case of obviousness. Therefore, the combination of Kanterakis, Lin, and Alexander, even if proper, fails to render obvious the apparatus of claim 30. The method of claim 38 is not rendered obvious by the cited combination of references for analogous reasons. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103 and submit that claims 30 and 38 are in condition for allowance.

C. Comments on Claims 33-37 and 39

The combination of Kanterakis and Lin, even if proper, fails to teach or suggest “waiting for a period of time until a predetermined condition is met where, if further requests for said file are received by the network element from one or more other hosts before the period of time expires, then said one or more other hosts are added to the group” as recited in claim 33. On pages 8-9, the Action alleges that Lin discloses the claimed waiting. Lin discloses a timer that controls periodic transmission of a heartbeat message, as disclosed in column 6, lines 22 to 29 and depicted in Figure 3, steps 310, 330 & 340. Applicants respectfully disagree that Lin discloses the missing claim features.

Notably, the timer of Lin is not used as a condition for transmission of a requested file to one or more of the caching servers. Lin does not disclose or suggest any delay of the transmission of the requested file until a predetermined condition is met. Furthermore, as discussed above, both Lin and Kanterakis fail to disclose or lead towards transmission of one or more files to caching servers situated at the same location and hence are not analogous to claim 33. Consequently, the method of claim 33 is not rendered obvious by Lin in view of Kanterakis. The methods of claims 34-37 and 39 are also non-obvious by way of their

dependency on claim 33, in addition to the features they recite. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103 and submit that claims 33-37 and 39 are in condition for allowance.

D. Comments on Claim 40

Claim 40 depends from claim 33 discussed above, and is allowable at least due to its dependence on an allowable claim. Further, Iliadis does not disclose the limitation of a group to further hosts situated at the same location and so does not cure the deficiencies of Lin and Kanterakis noted above. Consequently, the computer readable medium of claim 40 is not obvious over Lin in view of Kanterakis and Iliadis. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103 and submit that claim 40 is in condition for allowance.

CONCLUSION

For at least the reasons set forth above, Applicants submit that the pending claims distinguish over the applied art, and are in condition for allowance. However, if the Examiner believes that further discussion and/or amendment would be helpful, the Examiner is invited to telephone the Applicants' undersigned representative.

Respectfully submitted,
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